IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 25054 of 2007(G)

ID.27/2005 of LABOUR COURT, KOLLAM
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PETITIONER:

VINCY PHILIP,
DIRECTOR, PHILIPS NURSING HOME, PATHANAPURAM P.O.,
KOLLAM DISTRICT, PIN-689 695.

BY ADV. SRI.P.HARIDAS

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY, DEPARTMENT OF
   LABOUR, THIRUVANANTHAPURAM.

2. **SMT. ROSAMMA ABRAHAM,**
   KATTIKKAL PUTHEN VEEDU, NADUKKUNNU P.O.,
   PATHANAPURAM, KOLLAM DISTRICT.

BY GOVERNMENT PLEADER SMT.M.R.SREELATHA
ADV. SRI.R.KRISHNA RAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE RECEIPT DTD.26.9.2003.

EXT.P2: COPY OF THE MEMO DT.16.10.2006.

EXT.P3: COPY OF THE AWRD DT.27.2.2007 IN I.D.NO.27/2005 ON THE FILES OF THE LABOUR COURT, KOLLAM.

TRUE COPY

P.A.TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).No.25054 of 2007

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Dated this the 28th day of November, 2007

JUDGMENT

The management in I.D.No.27/2005 before the Labour Court, Kollam, is challenging Ext.P3 award passed by the Labour court in that I.D. The issue referred for adjudication was as follows:

> "Whether the Management of Philips Nursing Home, Pathanapuram has denied employment to pharmacy staff Smt.Rosamma Abraham as alleged by her? If so to what relief she is entitled to?"

2. The workman contended that she was denied employment by the management from 6.10.2004 without any valid reasons. The case of the management was that the workman borrowed an amount of Rs.34,795/- in order to close a loan availed by her husband from the Pathanapuram Service Co-operative Bank and agreed that the same could be deducted from her salary at the rate of Rs.800/- from September 2004 onwards. When deduction was ordered in September 2004, she did not report for duty and thereafter abandoned her employment. Evidence was adduced by both sides. The Labour

Court chose to believe the version of the workman, especially taking into account the fact that the alleged denial of employment was on 6.10.2004 and immediately thereafter the workman filed the complaint before the Deputy Labour Officer, Punalur, who conducted conciliation conference on 21.10.2004, which would show that the workman did not abandon employment as suggested by the management. Evidence was also adduced to prove the financial transaction between the management and the workman. The Labour Court chose to disbelieve the management version taking into account the fact that the cheque stated to have been issued to the petitioner was in the account of one Diana Philip, daughter of the Director of the hospital and not of the hospital itself.

3. After hearing both sides I am inclined to agree with the Labour Court. The very fact that the workman immediately complained to the Deputy Labour Officer, would show that she did not have any intention to abandon her employment. Assuming that the management's contention was bonafide they could have offered before the Labour Court to reinstate the

workman if they had no intention of denying employment to the workman.

The counsel for the petitioner would contend that, that could not have been done because the hospital was closed down. I find that the establishment was closed only on 1.9.2006 whereas the proceedings before the Labour Court started in 2005. As such I do not find any perversity in the findings of the Labour Court, refusing to accept the version of the management that the workman had abandoned employment. Without finding that the findings of the Labour Court are perverse, there would be no justification to interfere with Ext.P3 award. Therefore, I do not find any merit in the writ petition accordingly the same is dismissed.

S.SIRI JAGAN, JUDGE

dvs